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October 4, 2009

Received
in Clerk's Office
U.S. District Court
SOUTHERN DISTRICT OF NEW YORK
OCT 14 2009

Judge Dora L. Irizarry
225 Cadman Plaza East
Brooklyn, NY 11201

Re:

Novak v. Active Window Pub, et al No. Cv 01- 3566 (DLI-WDW)
Opposition to request for Summary Judgment

Dear Judge Irizarry,

Robert Novak plaintiff *pro se* opposes the defendants request as follows;

1. Defense counsel launched into yet another unnecessary motion based upon its own failures on basically the same grounds as their August 14, 2009 Motion.
2. In the May 19, 2009 hearing/conference I stated on the record that I didn't receive the defendant's discovery requests. Ms. Kouril agreed to resend them, she failed to do so.¹
3. It was not until I received defendants 8/14 motion, then *only* as an exhibit "O" did plaintiff receive defendants request for interrogatories, admissions and release for medical records on August 14, 2009.
4. Defendants sat on their hands for three months! Rather than wasting the resources of the Court why didn't they phone or send a letter and ask me what the status was, ask - when can I expect your answers. Did you receive them?

¹ Defendant alleges that all the discovery documents were included in a UPS delivery on April 22, 2009. That is inaccurate. Moreover, it is not my signature UPS enters "Novak" on all deliveries as we are a well known account of theirs.

5. Robert Novak has completed all discovery requests timely prior to the September 30th deadline, Defendants did not comply.²
6. Defendants can not now allege that Plaintiffs' are late in responding to the discovery requests because of the following;
 - a) Defendants failed to serve or re-serve their requests for discovery.
 - b) Judge Wall set a deadline of September 30, 2009, which Plaintiff complied with.
 - c) Defendants took 8 months to receive defendants responses.
 - d) Defendant Mark Rosenstein failed to appear at a scheduled oral deposition on September 24th.
7. Judge Wall Ordered from the bench that the then untimely deadlines be set to September 30, 2009.
8. In Judge Wall's order of October 5, 2009 he specifically responded to defendants allegations of failure to admit, therefore, this issue is res judicata.
9. Plaintiff did in fact file his admissions and denials

"Answers to Defendants Requests For Admissions

Plaintiff denies the allegations in paragraphs 1,2,4,5,6,7,9,10,11,12,13 & 14

10. If the Court decides that plaintiff's responses don't meet a standard they can be amended.
11. Plaintiff tried to have two witnesses provide testimony. John Benn was found to have a stroke and is incapacitated. R.

1. ² In fact according to Judge Walls Order of May 19th parties had until September 30, 2009 to complete discovery. Further, the Court said that's why I'm giving both parties until then to complete discovery.

Hudson refused to cooperate to my interrogatories.

12. Defendant alleges I didn't provide any evidence of defamatory conduct by M. Rosenstein. I intended to depose him but this defendant failed to appear as instructed by Ms. Kouril.
13. Defendant alleges I did not produce any evidence as to trademark infringement; the defendant has produced this evidence clearly in my interrogatories.
14. I have not received the May 15th transcript as defendant claims to have ordered.
15. I further believe this request is past the deadline to file such a Motion

Therefore, the allegations are unfounded to proceed on Motion for Summary judgment. I truly believe this is another delay tactic to take this case to trial.

A pre-trial conference is set before Judge Wall on December 8th.

Respectfully submitted,



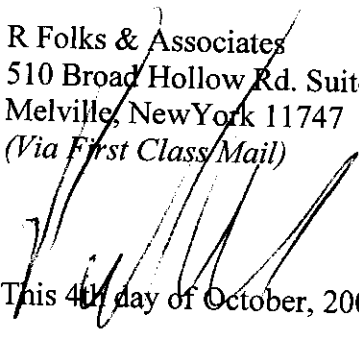
Robert Novak³

³ I would like to advise the Court that I will be traveling from December 26 thru January 24, 2010

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the within and foregoing
OPPOSITION REQUEST FOR A PRE-MOTION CONFERENCE
DEFENDANTS. upon counsel of record addressed as follows:

R Folks & Associates
510 Broad Hollow Rd. Suite 304
Melville, New York 11747
(Via First Class Mail)


This 4th day of October, 2009.



Pets Warehouse®

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JUDIE DORA L. FRIZZARY
225 CADMAN PLAZA
BROOKLYN, N.Y. 11201

CV-01-3566

1